

✓
INS 1 SECTION 108. 854.14 (1) ✓ of the statutes is repealed.

36-1 2 SECTION 109. 854.14 (3m) ✓ of the statutes is created to read:

3 854.14 (3m) EFFECT IF DEATH CAUSED BY SPOUSE. (a) *Definitions*. In this
4 subsection:

5 1. "Owner" means a person appearing on the records of the policy issuer as the
6 person having the ownership interest, or means the insured if no person other than
7 the insured appears on those records as a person having that interest. In the case
8 of group insurance, the "owner" means the holder of each individual certificate of
9 coverage under the group plan and does not include the person who contracted with
10 the policy issuer on behalf of the group, regardless of whether that person is listed
11 as the owner on the contract.

12 2. "Ownership interest" means the rights of an owner under a policy.

13 3. "Policy" means an insurance policy insuring the life of a spouse and providing
14 for payment of death benefits at the spouse's death.

15 4. "Proceeds" means the death benefit from a policy and all other economic
16 benefits from it, whether they accrue or become payable as a result of the death of
17 an insured person or upon the occurrence or nonoccurrence of another event.

18 (b) *Life insurance*. 1. Except as provided in sub. (6), if a noninsured spouse
19 unlawfully and intentionally kills an insured spouse, the surviving spouse's
20 ownership interest in a policy that designates the decedent spouse as the owner and
21 insured, or in the proceeds of such a policy, is limited to a dollar amount equal to
22 one-half of the marital property interest in the interpolated terminal reserve and in
23 the unused portion of the term premium of the policy on the date of death of the
24 decedent spouse. All other rights of the surviving spouse in the ownership interest

1 or proceeds of the policy, other than the marital property interest described in this
2 subsection, terminate at the decedent spouse's death.

3 2. Notwithstanding s. 766.61 (7) and except as provided in sub. (6), if an insured
4 spouse unlawfully and intentionally kills a noninsured spouse, the ownership
5 interest at death of the decedent spouse in any policy with a marital property
6 component that designates the surviving spouse as the owner and insured is a
7 fractional interest equal to one-half of the portion of the policy that was marital
8 property immediately before the death of the decedent spouse.

9 (c) *Deferred employment benefits.* Notwithstanding s. 766.62 (5) and except as
10 provided in sub. (6), if the employee spouse unlawfully and intentionally kills the
11 nonemployee spouse, the ownership interest at death of the decedent spouse in any
12 deferred employment benefit, or in assets in an individual retirement account that
13 are traceable to the rollover of a deferred employment benefit plan, that has a marital
14 property component and that is attributable to the employment of the surviving
15 spouse is equal to one-half of the portion of the benefit or assets that was marital
16 property immediately before the death of the decedent spouse.

17 (d) *Deferred marital property.* Except as provided in sub. (6), if the surviving
18 spouse unlawfully and intentionally kills the decedent spouse, the estate of the
19 decedent shall have the right to elect no more than 50% of the augmented deferred
20 marital property estate, as determined under s. 861.02 (2), as though the decedent
21 spouse were the survivor and the surviving spouse were the decedent. The court
22 shall construe the provisions of ss. 861.03 to 861.11 as necessary to achieve the intent
23 of this paragraph.

24 **SECTION 110.** 854.14 (5) (a) of the statutes is amended to read:

1 854.14 (5) (a) A final judgment establishing criminal accountability for the
2 unlawful and intentional killing of the decedent conclusively establishes the
3 convicted individual as the decedent's killer for purposes of this section ~~and s. 861.02~~
4 (8).

5 **SECTION 111.** 854.14 (5) (b) [✓] of the statutes is amended to read:

6 854.14 (5) (b) A final adjudication of delinquency on the basis of an unlawful
7 and intentional killing of the decedent conclusively establishes the adjudicated
8 individual as the decedent's killer for purposes of this section ~~and s. 861.02 (8).~~

9 **SECTION 112.** 854.14 (5) (c) [✓] of the statutes is amended to read:

10 854.14 (5) (c) In the absence of a judgment establishing criminal accountability
11 under par. (a) or an adjudication of delinquency under par. (b), the court, upon the
12 petition of an interested person, shall determine whether, ~~under~~ based on the
13 preponderance of the evidence standard, the killing of the decedent was unlawful
14 and intentional for purposes of this section ~~and s. 861.02 (8).~~

15 **SECTION 113.** 854.15 (1) (e) [✓] of the statutes is renumbered 854.01 (3) and
16 amended to read:

17 854.01 (3) "Revocable", [✓] with respect to a disposition, provision, or
18 nomination, means one under which the decedent, at the time of ~~the divorce,~~
19 ~~annulment or similar event~~ referred to, was alone empowered, by law or under the
20 governing instrument, to ~~cancel the designation in favor of the former spouse or~~
21 ~~former spouse's relative,~~ change or revoke, regardless of whether ~~or not~~ the decedent
22 was then empowered to designate himself or herself in place of ~~the~~ a former spouse
23 ~~or the former spouse's relative~~ designee, and regardless of whether ~~or not~~ the
24 decedent then had the capacity to exercise the power.

25 **SECTION 114.** 854.17 [✓] of the statutes is amended to read:

1 **854.17 Classification; how determined Marital property classification;**
2 **ownership and division of marital property at death.** In chs. 851 to 882,
3 ~~classification~~ Classification of the property of a decedent spouse and surviving
4 spouse is, and ownership and division of that property at the death of a spouse, are
5 determined under ch. 766 and s. 861.01.

6 **SECTION 115.** 854.18 (1) (a) (intro.)[✓] of the statutes is amended to read:

7 854.18 (1) (a) (intro.) Except as provided in sub. (3) or in connection with the
8 ~~share of the surviving spouse who elects to take an elective share in deferred marital~~
9 ~~property~~ deferred marital property elective share amount of a surviving spouse who
10 elects under s. 861.02, ~~a~~ the share of a surviving spouse who takes under s. 853.11
11 ~~(2) 853.12, or a~~ the share of a surviving child who takes under s. 853.25, shares of
12 distributees abate, without any preference or priority as between real and personal
13 property, in the following order:

14 **SECTION 116.** 854.18 (3)[✓] of the statutes is amended to read:

15 854.18 (3) If the governing instrument expresses an order of abatement, or if
16 the decedent's transferor's estate plan or the ~~express or implied~~ purpose of the
17 transfer, as expressed, implied, or determined through extrinsic evidence, would be
18 defeated by the order of abatement under sub. (1), the shares of the distributees
19 abate as necessary to give effect to the intention of the transferor.

20 **SECTION 117.** 854.20[✓] (1) of the statutes is renumbered 854.20 (1) (a) and
21 amended to read:

22 854.20 (1) (a) Subject to par. (b) and sub. (4) (5), a legally adopted person is
23 treated as a birth child of the person's adoptive parents and the adoptive parents are
24 treated as the birth parents of the adoptive child for purposes of ~~intestate succession~~
25 transfers at death by, through, and from the adopted person and for purposes of any

1 statute or other rule conferring rights upon children, issue, or relatives in connection
2 with the law of intestate succession or governing instruments.

3 **SECTION 118.** 854.20 (2) (intro.) ✓ of the statutes is renumbered 854.20 (2) (am)
4 (intro.) and amended to read:

5 854.20 (2) (am) (intro.) Subject to sub. (4) (5), a legally adopted person ceases
6 to be treated as a child of the person's birth parents and the birth parents cease to
7 be treated as the parents of the child for the same purposes as under specified in sub.
8 (1) (a), except:

9 **SECTION 119.** 854.20 (2) (a) ✓ of the statutes is renumbered 854.20 (2) (am) 1. and
10 amended to read:

11 854.20 (2) (am) 1. If ~~a birth parent marries or remarries and the parent-child~~
12 relationship between the child is adopted by the stepparent, and one birth parent is
13 replaced by adoption, but the relationship to the other birth parent is not replaced,
14 then for all purposes the child is treated as the child of the birth parent whose spouse
15 ~~adopted the child~~ relationship was not replaced.

16 **SECTION 120.** 854.20 (2) (am) 2. b. and c. of the statutes ^{are} ✓ created to read:

17 854.20 (2) (am) 2. b. Subd. 2. a. applies only if the adopted person was a minor
18 at the time of adoption or if the adoptive parent raised the adopted person in a
19 parent-like relationship beginning on or before the child's 15th birthday and lasting
20 for a substantial period or until adulthood.

21 c. Subdivision 2. a. does not apply if the parental rights of the deceased birth
22 parent had been terminated.

23 **SECTION 121.** 854.20 (2) (b) ✓ of the statutes is renumbered 854.20 (2) (am) 2. a.
24 and amended to read:

854.20 (2) (am) 2. a. If Subject to subd. 2. b. and c., if a birth parent of a marital child dies and the other birth parent subsequently remarries and the child is adopted by the stepparent, the child is treated as the child of the deceased birth parent for purposes of inheritance transfers at death through that parent and for purposes of any statute or other rule conferring rights upon children, ^{↓ or} ~~issue, or relatives of that~~ parent under the law of intestate succession or governing instruments.

SECTION 122. 854.20 (3) of the statutes is renumbered 854.20 (2) (cm) and amended to read:

854.20 (2) (cm) ~~Sequential adoption.~~ Subject to sub. (4) (5), if an adoptive parent dies or his or her parental rights are terminated in a legal proceeding and the adopted child is subsequently adopted by another person, the former adoptive parent is considered to be a birth parent for purposes of this section subsection.

SECTION 123. 854.20 (4) of the statutes is renumbered 854.20 (1) (b), and 854.20 (1) (b) (intro.) and 3., as renumbered, are amended to read:

854.20 (1) (b) ~~Applicability.~~ (intro.) Subsections (1), (2) and (3) apply Subject
to sub. (5), paragraph (a) applies only if at least one of the following applies:

3. The adoptive parent raised the adopted person ~~was raised as a member of~~
~~the household by the adoptive parent from~~ in a parent-like relationship beginning
on or before the child's 15th birthday or before and lasting for a substantial period
or until adulthood.

SECTION 124. 854.20 (5) of the statutes is amended to read:

854.20 (5) CONTRARY INTENT. This section does not apply if the to a transfer is made under a governing instrument and there is a finding of contrary intent of if the person who executed the instrument had a contrary intent. Extrinsic evidence may be used to construe that intent.

****NOTE: The term "this section" includes all of the subparts of the section, so the suggested language "or any of its subparts" is not necessary.

~~unable to find any in prior. "This section" appears in the statutes 13,431 times~~

SECTION 125. 854.21 (1) (a) (intro.) of the statutes is renumbered 854.21 (1) (a)

and amended to read:

854.21 (1) (a) Except as provided in ~~par. (b) or~~ sub. (7), a gift of property by a governing instrument to a class of persons described as "issue," "lawful issue," "children," "grandchildren," "descendants," "heirs," "heirs of the body," "next of kin," "distributees," or the like includes a person adopted by a person whose birth child would be a member of the class, and issue of the adopted person, if the conditions for membership in the class are otherwise satisfied and ~~any of the following applies:~~ at least one of the criteria under s. 854.20 (1) (b) 1., 2., and 3. is satisfied.

SECTION 126. 854.21 (1) (a) 1., 2. and 3. of the statutes are repealed.

SECTION 127. 854.21 (1) (b) of the statutes is amended to read:

854.21 (1) (b) Except as provided in sub. (7), a gift ~~under par. (a) of~~ property by a governing instrument to a class of persons described as "issue," "lawful issue," "children," "grandchildren," "descendants," "heirs," "heirs of the body," "next of kin," "distributees," or the like excludes a birth child and his or her issue otherwise within the class if the birth child has been adopted and would cease to be treated as a child of the birth parent under s. 854.20 (2).

SECTION 128. 856.05 (5) of the statutes is amended to read:

856.05 (5) **APPLICABILITY OF SECTION.** This section applies to wills, ~~codicils, documents incorporated by reference under s. 853.32 (1) or (2) and information~~ needed for proof of a lost missing will under s. 856.17.

SECTION 129. 856.15 (1) of the statutes is amended to read:

1 856.15 (1) GENERALLY. The court may grant probate of an uncontested will on
2 the execution in open court by one of the subscribing witnesses of a sworn statement
3 that the will was executed as required by the statutes and that the testator was of
4 sound mind, of full age, and not acting under any restraint at the time of the
5 execution thereof. If an uncontested will contains an attestation clause showing
6 compliance with the requirements for execution under s. 853.03 or 853.05 or includes
7 an affidavit in substantially the form under s. 853.04 (1) or (2), the court may grant
8 probate without any testimony or other evidence.

9 SECTION 130. ✓ 856.16 of the statutes is repealed and recreated to read:

10 **856.16 Self-proved will.** (1) Unless there is proof of fraud or forgery in
11 connection with the affidavit, if a will includes an affidavit in substantially the form
12 under s. 853.04 (1) or (2), all of the following apply:

13 (a) The will is conclusively presumed to have been executed in compliance with
14 s. 853.03.

15 (b) Other requirements related to the valid execution of the will are rebuttably
16 presumed.

17 (c) A signature affixed to the affidavit is considered a signature affixed to the
18 will, if necessary to prove the due execution of the will.

****NOTE: I changed the language because some of it seemed redundant now that
this provision is not under s. 853.04. Please review it closely.

19 (2) Admission of a will under s. 856.13 or 856.15 is not dependent on the
20 existence of a valid affidavit under s. 853.04.

21 SECTION 131. ✓ 856.17 of the statutes is amended to read:

22 **856.17 Lost Missing will, how proved.** If any will is lost, destroyed by
23 accident ~~or~~, destroyed without the testator's consent, unavailable but revived under

1 s. 853.11 (6), or otherwise missing, the court has power to take proof of the execution
2 and validity of the will and to establish the same. The petition for the probate of the
3 will shall set forth the provisions thereof of the will.

4 **SECTION 132.** 857.03 (2) ✓ of the statutes is renumbered 766.31 (3) (b) 3., and
5 766.31 (3) (b) 3. (intro.) and a., as renumbered, are amended to read:

6 766.31 (3) (b) 3. (intro.) The surviving spouse and a distributee who is a
7 successor in interest to all or part of the decedent's one-half interest in marital
8 property may petition the court to approve an exchange of interests in the marital
9 property authorized under subd. 1. or 2., but court approval of the exchange is not
10 required for the agreement under subd. 1. or 2. to be effective. If the court approves
11 the exchange, the ~~personal representative~~ surviving spouse and the distributee shall
12 exchange their respective interests in 2 or more items of marital property and
13 distribute the items in a manner to conform with the exchange. The exchange shall:

14 a. Occur before the final distribution of the estate assets under the governing
15 instrument;

16 **SECTION 133.** ✓ 857.03 (2m) of the statutes is created to read:

17 857.03 (2m) The surviving spouse and the personal representative may
18 petition the court to approve an exchange of interests in marital property as provided
19 in s. 766.31 (3) (b). ✓ Δ³

20 **SECTION 134.** ✓ 861.01 (3) of the statutes is renumbered 766.31 (7m) and
21 amended to read:

22 766.31 (7m) PERSONAL INJURY DAMAGES; LOST EARNINGS. To the extent that
23 marital property includes damages for loss of future income arising from a personal
24 injury claim of the a surviving spouse, the surviving spouse is entitled to receive as

1 individual property that portion of the award that represents an income substitute
2 after the death of the other spouse.

3 **SECTION 135.** 861.01 (3m) of the statutes is created to read:

4 **861.01 (3m) PERSONAL INJURY DAMAGES; LOST EARNINGS.** Section 766.31 (7m)
5 determines the rights of a surviving spouse to that part of a personal injury claim
6 that represents future lost earnings of the surviving spouse.

7 **SECTION 136.** 861.01 (4) of the statutes is created to read:

8 **861.01 (4) ENFORCEMENT OF SURVIVING SPOUSE'S MARITAL PROPERTY RIGHTS IN**
9 **NONPROBATE ASSETS.** Section 766.70 applies to enforcement of a surviving spouse's
10 marital property rights in nonprobate assets.

11 **SECTION 137.** 861.01 (5) of the statutes is created to read:

12 **861.01 (5) DIVISION OF MARITAL PROPERTY ON AGGREGATE BASIS.** Section 766.31
13 (3) (b) determines how marital property may be divided upon the death of a spouse.

****NOTE: This section does not appear in an initial applicability provision.

14 **SECTION 138.** Subchapter II (title) of chapter 861 [precedes 861.018] of the
15 statutes is amended to read:

16 **CHAPTER 861**

17 **SUBCHAPTER II**

18 **ELECTIVE SHARE IN**

19 **DEFERRED MARITAL PROPERTY**

20 **ELECTIVE SHARE AMOUNT**

21 **SECTION 139.** 861.02 (title) of the statutes is amended to read:

22 **861.02 (title) Deferred marital property elective share amount.**

23 **SECTION 140.** 861.02 (4) of the statutes is amended to read:

Your note read "do same as 766.31 (3)(b); I am not sure what you meant by that."

1 861.02 (4) SATISFACTION. Satisfaction of the augmented deferred marital
2 property elective share amount is governed by ss. 861.06, 861.07, and 861.11.

3 **SECTION 141.** 861.02 (6) of the statutes is amended to read:

4 861.02 (6) WAIVER. Waiver of the deferred marital property elective share
5 amount is governed by s. 861.10.

6 **SECTION 142.** 861.02 (7) (b) of the statutes is amended to read:

7 861.02 (7) (b) If a decedent who is not domiciled in this state owns real property
8 in this state, the ~~right~~ rights of the surviving spouse ~~to take an elective share~~ in that
9 property ~~is~~ are governed by s. 861.20.

10 **SECTION 143.** 861.02 (8) of the statutes is repealed and recreated to read:

11 861.02 (8) EFFECT IF DEATH CAUSED BY SPOUSE. Section 854.14 (2) (c) and (3m)
12 (d) applies to election of deferred marital property if the decedent's surviving spouse
13 unlawfully and intentionally killed the decedent.

14 **SECTION 144.** 861.04 (2) of the statutes is repealed.

15 **SECTION 145.** 861.04 (2m) of the statutes is created to read:

16 861.04 (2m) When the surviving spouse is treated as the decedent under sub.
17 (1), the decedent is not treated as the surviving spouse for the purposes of s. 861.05
18 (1) (e) or (2m).

****NOTE: I did not add "or any other similar provision" to the end of this subsection
because we should include only specific provisions; otherwise, "any other similar
provision" may inadvertently include a provision that was not intended to be included.
I will look for similar provisions that we should include.

19 **SECTION 146.** 861.05 (1) (c) of the statutes is amended to read:

20 861.05 (1) (c) Transfers of deferred marital property to persons other than the
21 surviving spouse who did not make the transfer, with the written joinder or written
22 consent of ~~the surviving~~ that spouse.

***NOTE: This section does not appear in an initial applicability provision.

1 **SECTION 147.** 861.05 (1) (e) of the statutes is created to read:

2 861.05 (1) (e) The deferred marital property component of any deferred
3 employment benefit plan, or of assets in an individual retirement account that are
4 traceable to the rollover of a deferred employment benefit plan, held by the surviving
5 spouse that would have terminated under s. 766.62 (5) had it been marital property.

6 **SECTION 148.** 861.05 (2) (title) of the statutes is amended to read:

7 861.05 (2) (title) VALUATION OF DECEDENT'S PROPERTY AND TRANSFERS.

8 **SECTION 149.** 861.05 (2m) of the statutes is created to read:

9 861.05 (2m) VALUATION OF SURVIVING SPOUSE'S PROPERTY AND TRANSFERS. The
10 surviving spouse's property included in the augmented deferred marital property
11 estate under s. 861.04 (1) is valued in the same manner as the decedent spouse's
12 property included in the augmented deferred marital property estate is valued under
13 sub. (2), subject to the following:

14 (a) The surviving spouse shall be treated as having died after the decedent on
15 the date of the decedent's death notwithstanding the 120-hour survival requirement
16 under s. 854.03 (1).

17 (b) Life insurance on the surviving spouse's life shall have the value of the
18 deferred marital property component of the interpolated terminal reserve and the
19 unused portion of the term premium of the policy as of the date of the decedent's
20 death.

21 **SECTION 150.** 861.06 (title) of the statutes is amended to read:

22 **861.06 (title) Satisfaction of deferred marital property elective share**
23 **amount.**

24 **SECTION 151.** 861.06 (2) (title) of the statutes is amended to read:

1 861.06 (2) (title) INITIAL SATISFACTION OF DEFERRED MARITAL PROPERTY ELECTIVE
2 SHARE AMOUNT.

3 **SECTION 152.** 861.06 (2) (b) (intro.) of the statutes is amended to read:

4 861.06 (2) (b) (intro.) All marital, individual, deferred marital, or deferred
5 individual property, transferred to the surviving spouse, including any beneficial
6 interest in property transferred in trust:

7 **SECTION 153.** 861.06 (2) (b) 4. a. of the statutes is amended to read:

8 861.06 (2) (b) 4. a. The first \$5,000 of the value of the gifts from the decedent
9 to the surviving spouse each year. Each gift shall be valued as of the date of the gift.

10 **SECTION 154.** 861.06 (6) of the statutes is created to read:

11 861.06 (6) VALUATION. The value of property used to satisfy the deferred marital
12 property elective share includes the value of any property transferred outright to the
13 surviving spouse, the commuted value of any present or future interest in property
14 transferred to the surviving spouse, and the commuted value of property payable to
15 the surviving spouse under any trust, life insurance settlement option, annuity
16 contract, public or private pension, disability compensation, death benefit or
17 retirement plan, or any similar arrangement.

18 **SECTION 155.** 861.07 (2) (intro.) of the statutes is amended to read:

19 861.07 (2) PERSONS LIABLE. (intro.) The following persons are liable to make
20 a prorated contribution toward satisfaction of the surviving spouse's deferred
21 marital property elective share amount:

22 **SECTION 156.** 861.10 (1) of the statutes is amended to read:

23 861.10 (1) RIGHT TO ELECT MAY BE WAIVED. The right to elect a deferred marital
24 property elective share amount may be waived by the surviving spouse in whole or
25 in part. The waiver may take place before or after marriage. The waiver shall must

1 be contained in a marital property agreement that is enforceable under s. 766.58 or
2 in a signed document filed with a court described in s. 861.08 (1) (a) after the
3 decedent's death.

4 **SECTION 157.** ✓ 861.10 (2) of the statutes is amended to read:

5 861.10 (2) WAIVER OF "ALL RIGHTS". Unless the waiver provides otherwise, a
6 waiver of "all rights", or equivalent language, in the property or estate of a present
7 or prospective spouse, or in a complete property settlement entered into because of
8 separation or divorce, is a waiver of all rights in the deferred marital property
9 elective share amount.

10 **SECTION 158.** ✓ 861.11 (2) (a) (intro.) of the statutes is amended to read:

11 861.11 (2) (a) (intro.) Upon a beneficiary's request for payment, a payer or other
12 3rd party who has received satisfactory proof of the decedent's death and who has not
13 received written notice that the surviving spouse or his or her representative intends
14 to file a petition for the deferred marital property elective share amount or that a
15 petition for the election has been filed is not liable for any of the following:

16 **SECTION 159.** ✓ 861.11 (2) (b) of the statutes is amended to read:

17 861.11 (2) (b) A payer or other 3rd party is liable for payments made or other
18 actions taken after receipt of written notice of the intent to file a petition for the
19 elective share amount or written notice that a petition for the elective share amount
20 has been filed.

21 **SECTION 160.** ✓ 861.11 (5) (b) of the statutes is amended to read:

22 861.11 (5) (b) Notwithstanding sub. (2), in addition to the protections afforded
23 a financial institution under ss. 701.19 (11) and 710.05 and chs. 112 and 705 a
24 financial institution is not liable for having transferred an account included in the
25 augmented deferred marital property estate under s. 861.03 to a beneficiary

1 designated in a governing instrument, or for having taken any other action in
2 reliance on the beneficiary's apparent entitlement under the terms of a governing
3 instrument, regardless of whether the financial institution received written notice
4 of an intent to file, or the filing of, a petition for the deferred marital property elective
5 share amount.

6 **SECTION 161.** ✓ 861.17 (3) of the statutes is amended to read:

7 861.17 (3) If the spouse is successful in an action to reach fraudulent property
8 arrangements, recovery is limited to the share amount the spouse would receive
9 under ch. 852 and this chapter. Other rules of this chapter apply so far as possible.
10 Recovery A spouse who recovers under this subsection forfeits any power of
11 appointment ~~which~~ that the surviving spouse possesses over the remaining portion
12 of the fraudulently arranged property, except a special power.

13 **SECTION 162.** ✓ 861.21 (1) (a) of the statutes is amended to read:

14 861.21 (1) (a) "Governing instrument" has the meaning given in s. 854.01 (2).

15 **SECTION 163.** ✓ 861.21 (2) of the statutes is amended to read:

16 861.21 (2) ~~IF MARITAL~~ DECEDENT'S PROPERTY INTEREST IN HOME. Subject to subs.
17 (4) and (5), if a married decedent has a ~~marital~~ property interest in a home, the
18 decedent's entire interest in the home shall be assigned to the surviving spouse if the
19 surviving spouse petitions the court requesting such a distribution and if a governing
20 instrument does not provide a specific transfer of the decedent's interest in the home
21 to someone other than the surviving spouse. The surviving spouse shall file the
22 petition within 6 months after the decedent's death, unless the court extends the
23 time for filing.

24 **SECTION 164.** ✓ 861.21 (3) of the statutes is repealed.

25 **SECTION 165.** ✓ 861.21 (4) of the statutes is amended to read:

1 861.21 (4) PAYMENT BY SURVIVING SPOUSE. The court shall assign the interest in
2 the home under sub. (2) to the surviving spouse upon payment of the fair market
3 value of the decedent's interest in the home that does not pass to the surviving spouse
4 under intestacy or under ~~the~~ a governing instrument. Payment shall be made to the
5 fiduciary holding title to the interest. The surviving spouse may use assets due him
6 or her from the fiduciary to satisfy all or part of the payment in kind. Unless the court
7 extends the time, the surviving spouse shall have one year from the decedent's death
8 to pay the value of the assigned interest.

9 **SECTION 166.** ✓ 861.21 (5) of the statutes is amended to read:

10 861.21 (5) SEVERANCE OF HOME FROM SURROUNDING LAND. On petition of the
11 surviving spouse or of any interested person that part of the land is not necessary for
12 dwelling purposes and that it would be inappropriate to assign all of the surrounding
13 land as the home under sub. (2), the court may set off for the home as much of the
14 land as is necessary for a dwelling. In determining how much land should be set off,
15 the court shall take into account the use and marketability of the parcels set off as
16 the home and the remaining land.

17 **SECTION 167.** ✓ 861.31 (1c) of the statutes is repealed.

18 **SECTION 168.** ✓ 861.31 (1m) of the statutes is amended to read:

19 861.31 (1m) The court may, without notice or on such notice as the court
20 directs, order payment by the personal representative or special administrator of an
21 allowance as ~~it~~ the court determines necessary or appropriate for the support of the
22 surviving spouse and any dependent minor children of the decedent during the
23 administration of the estate. ~~In making or denying the order the~~ The court shall
24 consider the size of the probate estate, other resources available for support, the
25 existing standard of living, and any other factors it considers relevant.

1 **SECTION 169.** 861.31 (2) of the statutes is amended to read:

2 861.31 (2) The court may order that an allowance may be made to the spouse
3 for support of the spouse and any ~~dependent~~ minor children of the decedent, or that
4 separate allowances may be made to the spouse and to the ~~dependent~~ minor children
5 of the decedent or their guardian, if any, if the court finds separate allowances
6 advisable. If there is no surviving spouse, the court may order that an allowance may
7 be made to the ~~dependent~~ minor children of the decedent or to their guardian, if any.

8 **SECTION 170.** ✓ 861.31 (4) (intro.) of the statutes is amended to read:

9 861.31 (4) (intro.) The court may ~~direct~~ order that the allowance be charged
10 against income or principal, either as an advance or otherwise, but ~~in no event may~~
11 the court may not order that an allowance for support of ~~dependent~~ minor children
12 of the decedent be charged against the income or principal interest of the surviving
13 spouse. The court may ~~direct~~ order that the allowance for support of the surviving
14 spouse, not including any allowance for support of ~~dependent~~ minor children of the
15 decedent, be applied in satisfaction of any of the following:

16 **SECTION 171.** ✓ 861.31 (4) (a) of the statutes is amended to read:

17 861.31 (4) (a) Any entitlement of the surviving spouse under s. ~~853.11 (2)~~
18 853.12.

19 **SECTION 172.** ✓ 861.33 (title) of the statutes is amended to read:

20 **861.33 (title) Selection of personalty by surviving spouse or children.**

21 **SECTION 173.** ✓ 861.33 (1) (a) (intro.) of the statutes is amended to read:

22 861.33 (1) (a) (intro.) Subject to this section, in addition to all allowances and
23 distributions, the surviving spouse, ~~or if there is no surviving spouse the decedent's~~
24 ~~children~~, may file with the court a written selection of the following personal

1 property, which shall ~~thereupon~~ then be transferred to the spouse ~~or children~~ by the
2 personal representative:

3 **SECTION 174.** 861.33 (1) (b) of the statutes is amended to read:

4 861.33 (1) (b) The selection in par. (a) may not include items specifically
5 bequeathed except that the surviving spouse ~~or children~~ may in every case select the
6 normal household furniture, furnishings, and appliances necessary to maintain the
7 home. For this purpose antiques, family heirlooms, and collections ~~which~~ that are
8 specifically bequeathed are not classifiable as normal household furniture or
9 furnishings.

10 **SECTION 175.** 861.33 (1) (c) of the statutes is repealed.

11 **SECTION 176.** 861.33 (2) of the statutes is amended to read:

12 861.33 (2) If it appears that claims may not be paid in full, the court may, upon
13 petition of any creditor, limit the transfer of personalty to the spouse ~~or children~~
14 under this section to items not exceeding \$5,000 in aggregate inventory value until
15 ~~such time as~~ the claims are paid in full or the court otherwise orders, or the court
16 may require the spouse ~~or children~~ to retransfer property in excess of \$5,000 or, at
17 the option of the spouse ~~or children~~, pay the excess in value over this amount.

18 **SECTION 177.** 861.33 (3) of the statutes is amended to read:

19 861.33 (3) The surviving spouse ~~or children~~ may select items not specifically
20 bequeathed of the type specified under sub. (1) (a) 4. exceeding in value the \$3,000
21 limit or obtain the transfer of items exceeding the limit set by the court under sub.
22 (2), by paying to the personal representative the excess of inventory value over the
23 respective limit.

24 **SECTION 178.** 861.33 (4) of the statutes is amended to read:

1 861.33 (4) ~~Subject to sub. (1) (e), the~~ The personal representative has power,
2 without court order, to execute appropriate documents to effect transfer of title to any
3 personal property selected by the spouse ~~or children~~ selects under this section. A
4 person may not question the validity of the documents of transfer or refuse to
5 accomplish the transfer on the grounds that the personal representative is also the
6 surviving spouse ~~or the only child~~ of the decedent.

7 SECTION 179. [✓]861.35 (title) of the statutes is amended to read:

8 **861.35 (title) Special allowance for support of spouse and support and**
9 **education of dependent minor children.**

10 SECTION 180. [✓]861.35 (1c) of the statutes is repealed.

11 SECTION 181. [✓]861.35 (1m) (intro.) of the statutes is amended to read:

12 861.35 (1m) (intro.) If the decedent is survived by a spouse or by minor
13 children, the court may order an allowance for the support and education of each
14 dependent minor child until he or she reaches a specified age, not to exceed 18, and
15 for the support of the spouse. This allowance may be made whether the estate is
16 testate or intestate. If the decedent is not survived by a spouse, the court also may
17 allot directly to ~~any of the dependent~~ the minor children household furniture,
18 furnishings, and appliances. ~~No The court may not order an allowance may be made~~
19 under this section if any of the following ~~apply~~ applies:

20 SECTION 182. [✓]861.35 (1m) (a) of the statutes is amended to read:

21 861.35 (1m) (a) The decedent has amply provided for each minor child and for
22 the spouse by the ~~terms of his or her will and the estate is sufficient to carry out the~~
23 ~~terms after payment of all debts and expenses~~ transfer of probate or nonprobate
24 assets, or support and education have been provided for by any other means.

25 SECTION 183. [✓]861.35 (1m) (b) of the statutes is amended to read:

1 861.35 (1m) (b) In the case of ~~dependent~~ minor children, if the surviving spouse
2 is legally responsible for support and education and has ample means to provide
3 them in addition to his or her own support.

4 **SECTION 184.** [✓]861.35 (1m) (c) of the statutes is amended to read:

5 861.35 (1m) (c) In the case of the surviving spouse, if he or she has ample means
6 to provide for his or her support.

7 **SECTION 185.** [✓]861.35 (2) of the statutes is amended to read:

8 861.35 (2) The court may set aside property to provide an allowance and may
9 appoint a trustee to administer the property, subject to the continuing jurisdiction
10 of the court. If a child dies or reaches the age of 18, or if at any time the property held
11 by the trustee is no longer required for the support of the spouse or the support and
12 education of ~~any dependent~~ the minor child, any remaining property is to be
13 distributed by the trustee as ~~directed by the court~~ orders in accordance with the
14 terms of the decedent's will or to the heirs of the decedent in intestacy or to satisfy
15 unpaid claims of the decedent's estate.

16 **SECTION 186.** [✓]861.35 (3) (a) of the statutes is amended to read:

17 861.35 (3) (a) The effect on claims under s. 859.25. The court shall balance the
18 needs of the spouse or ~~dependent~~ minor children against the nature of the creditors'
19 claims in setting the amount allowed under this section.

20 **SECTION 187.** [✓]861.35 (4) (intro.) of the statutes is amended to read:

21 861.35 (4) (intro.) The court may ~~direct~~ order that the allowance to the
22 surviving spouse, not including any allowance for the support and education of
23 dependent minor children, be applied in satisfaction of any of the following:

24 **SECTION 188.** [✓]861.35 (4) (a) of the statutes is amended to read:

1 861.35 (4) (a) Any entitlement of the surviving spouse under s. 853.11 (2)
2 853.12.

3 **SECTION 189.** 863.08[✓] of the statutes is amended to read:

4 **863.08 Exchange by distributee and surviving spouse.** In its final
5 judgment or other order, the court shall assign items to the surviving spouse and
6 distributee to conform with the exchange under s. 857.03 (2) 766.31 (3) (b) to the
7 extent that the court approved the exchange.

8 **SECTION 190.** 863.15[✓] of the statutes is amended to read:

9 **863.15 Right of retention Debts to estate.** ~~When~~ If a distributee of an estate
10 is indebted to the estate, the ~~amount of the indebtedness if due, or the present worth~~
11 ~~of the indebtedness, if not due, shall be treated as an offset by the personal~~
12 ~~representative against property of the estate to which the distributee is entitled. In~~
13 ~~contesting the offset the distributee shall have the benefit of any defense which~~
14 ~~would be available to the distributee in a direct proceeding by the personal~~
15 ~~representative for the recovery~~ treatment of the debt is governed by s. 854.12.

16 **SECTION 191.** 863.16[✓] of the statutes is repealed and recreated to read:

17 **863.16 Valuation used in distribution of fractional shares.** Valuation of
18 property distributed in satisfaction of a fractional share is determined by s. 854.115.

19 **SECTION 192.** 863.19[✓] of the statutes is repealed and recreated to read:

20 **863.19 Valuation used in distribution of estate assets.** Valuation of
21 property distributed in satisfaction of a pecuniary bequest, or a dollar amount fixed
22 by formula or otherwise, is determined by s. 854.115.

23 **SECTION 193.** 865.07[✓] (1) (d) of the statutes is amended to read:

24 865.07 (1) (d) The decedent died intestate or testate, and, if testate, whether
25 the original will is in the possession of the court or accompanies the application and,

1 contains an attestation clause showing compliance with the requirements of
2 execution under s. 853.03 or 853.05 or includes an affidavit in substantially the form
3 under s. 853.04 (1) or (2), and does not expressly prohibit informal administration;

4 **SECTION 194.** ✓ 867.03 (1g) (intro.) of the statutes is amended to read:

5 867.03 (1g) GENERALLY. (intro.) When a decedent leaves ~~solely owned~~ property
6 subject to administration in this state which does not exceed \$20,000 \$50,000 in
7 value, any heir of the decedent or person who was guardian of the decedent at the
8 time of the decedent's death may collect any money due the decedent, receive the
9 property of the decedent, and have any evidence of interest, obligation to, or right of
10 the decedent transferred to the affiant if the heir or guardian provides to the person
11 owing the money, having custody of the property, or acting as registrar or transfer
12 agent of the evidences of interest, obligation to, or right, or, if the property is an
13 interest in or lien on real property, provides to the register of deeds preliminary to
14 the recording required under sub. (2m), proof of prior mailed notice under sub. (1m)
15 if applicable and an affidavit in duplicate showing all of the following:

16 **SECTION 195.** ✓ 867.03 (1g) (b) of the statutes is amended to read:

17 867.03 (1g) (b) The total value of the decedent's property subject to
18 administration in this state at the date of decedent's death.

19 **SECTION 196.** ✓ 867.035 (1) (a) 4. of the statutes is amended to read:

20 867.035 (1) (a) 4. The value of the ~~solely owned~~ property subject to
21 administration in this state left by the decedent, after payment of burial costs, does
22 not exceed the amount under s. 867.03 (1g) (intro.).

23 **SECTION 197.** ✓ 1997 Wisconsin Act 188, section 233 (1) is amended to read:

24 [1997 Wisconsin Act 188] Section 233 (1) This act first applies to transfers
25 relating to deaths occurring on January 1, 1999, except ~~with respect to~~ that this act

INS
5A-23

1 does not apply to transfers under irrevocable governing instruments executed before
2 that date.

3 **SECTION 198. Initial applicability.**

4 (1) The treatment of sections 40.02 (8) (a) 2., 705.06 (1) (c) and (2), 705.27,
5 852.12, 854.08 (6) (a) 1. and 2., 854.115, 854.12, 861.31 (1m), (2), and (4) (intro.) and
6 (a), 861.33 (1) (a) (intro.) and (b), (2), (3), and (4), 861.35 (1m) (intro.), (1m) (a), (b),
7 and (c), (2), (3) (a), and (4) (intro.) and (a), 863.15, 863.16, and 863.19 of the statutes,
8 the renumbering and amendment of sections 705.04 (2), 852.01 (1) (a) 2., and 854.08
9 (5) of the statutes, and the creation of sections 705.04 (2) (a) and (d), 852.01 (1) (a)
10 2. b., and 854.08 (5) (a) and (d) of the statutes first apply to transfers related to deaths
11 occurring on the effective date of this subsection ~~except with respect to~~ irrevocable
12 governing instruments executed before that date.

13 (END)

but do not apply to transfers
under

the language provided in subsection (1) does not apply to transfers
under irrevocable governing instruments executed before the effective date
of the subsection, but does apply to transfers under irrevocable
governing instruments executed on or after the effective date of the
subsection.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0135/p1dn

CMH:.....

9

9
A statute may be classified as substantive, procedural, or remedial and such classification determines whether a statute is presumed to operate prospectively or retroactively. If the changes are remedial or procedural, the statute is presumed to apply retroactively if it does not impair contracts or other vested rights and if there is no clearly expressed contrary legislative intent. *Boggs v. Morden*, 117 Wis.2d 773, 775, 345 N.W.2d 490, 491 (1984), and *Gutter v. Seaman*, 103 Wis.2d 1, 17, 308 N.W.2d 403, 411 (1981). You state that the changes to all of the provisions that are not found in the initial applicability provision are remedial and procedural; therefore, the additional language that would "affirmatively state that.... the changes are assumed to apply to any matter that has not been resolved as of the effective date...." is unnecessary.

To indicate clearly that the changes are procedural or remedial, you asked for an explanatory note; however, Joint Rule 59 permits explanative notes only in "revision and correction bills prepared by the revisor of statutes, in reconciliation bills introduced by the committee on organization of either house, and in proposals introduced or offered and in substitute amendments or amendments offered by the joint legislative council or its law revision committee, at the request of the judicial council, and by or at the request of any other official interim study or investigative group." Since this proposal does not fit into one of those categories, the rules do not permit an explanatory note.

Alternatively, you asked for a statement of legislative intent. Courts may accept an analysis as a statement of legislative intent. *Stockbridge School Dist. v. DPI*, 202 Wis. 2d 214, 224-25 (1996), *Milwaukee v. Kilgore*, 193 Wis. 2d 168, 184-85 (1995), *Sheely v. DHSS*, 150 Wis. 2d 320, 336, 442 N.W.2d 1 (1989), *West Allis School Dist. v. DILHR*, 116 Wis. 2d 410, 422 (1984), and *In Re Estate of Haese*, 80 Wis. 2d 285, 296-97 (1977). If you like, I will add language to the analysis to indicate legislative intent.

Courts also may look to the relating clause to determine legislative intent. *Steinbarth v. Johannes*, 138 Wis. 2d 182, 189 (Ct. App. 1987), *State ex rel. Kleczka v. Conta*, 82 Wis. 2d 679, 689-90 (1978), *State v. Consolidated Freightways Corp.*, 72 Wis. 2d 727, 737 (1976), *Harris v. Kelley*, 70 Wis. 2d 242, 247 (1975), *Middleton Jt. School Dist.*, 60 Wis. 2d 294, 305 (1973), *Dept. of Natural Resources v. Clintonville*, 53 Wis. 2d 1, 9 (1971), *Townsend v. Wisconsin Desert Horse Asso.*, 42 Wis. 2d 414, 422 (1969), *Tanck v. Clerk*, and *Kalkopf v. Donald Sales & Mfg. Co.*, 33 Wis. 2d 247, 257 (1967). If you like, I will add language to the relating clause indicating legislative intent.

Also, comments from nonlegislative committees can aid in interpreting legislative intent. *In re Estate of Haese; Czaicki v. Czaicki*, 73 Wis.2d 9, 16, 242 N.W.2d 214 (1976). If you wish to add comments to the drafting file, please send them to me.

This draft is still a preliminary draft; it will have to be redrafted to be introducible. Please see the embedded notes in the draft.

Cathlene Hanaman
Legislative Attorney
Phone: (608) 267-9810
E-mail: cathlene.hanaman@legis.state.wi.us

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0135/plins
CMH:.....

1 Insert 10-17

2 (8) DEVOLUTION OF DISCLAIMED FUTURE INTEREST. (a) Unless the inter vivos
3 governing instrument provides otherwise, either expressly or as construed from
4 extrinsic evidence, upon the disclaimer of a preceding interest, a future interest held
5 by a person other than the disclaimant takes effect as if the disclaimant had died
6 immediately before the time of distribution or, if the disclaimant is an appointee
7 under a power exercised by a power of appointment, as if the disclaimant had died
8 before the effective date of the exercise of power.

9 (b) A future interest held by the disclaimant takes effect as described in par.
10 (a) unless the court determines that acceleration would contradict the donor's
11 probable intent.

?
****NOTE: Is the court the only person that can determine that acceleration would
contradict the donor's probable intent? I ask only because you were careful to use passive
voice elsewhere because the court was not the only person able to make determinations.

12
13
14 Insert 14-3

15 SECTION 1. 701.26 (title) of the statutes is amended to read:

16 701.26 (title) Disclaimers of nonprobate transfers at death.

History: 1997 a. 188.

17 SECTION 2. 701.26 of the statutes is renumbered 701.26 (1) and amended to
18 read:

19 701.26 (1) A person recipient may disclaim, under s. 854.13, any of the
20 following:

1 (a) An All or part of an interest in a joint tenancy, upon the death of another
2 joint tenant.

3 (b) An All or part of an interest in survivorship marital property, upon the death
4 of the other spouse.

5 (c) An All or part of an interest that is created by a nontestamentary instrument
6 and transferred at death, upon the death that causes the transfer.

History: 1997 a. 188.

7 **SECTION 3.** 701.26 (1) (d) of the statutes is created to read:

8 701.26 (1) (d) All or part of any other interest transferred under a governing
9 instrument, as defined in s. 854.01 (2).

10 **SECTION 4.** 701.26 (2) of the statutes is created to read:

11 701.26 (2) A recipient may disclaim, under s. 700.27, all or part of any interest
12 transferred under an inter vivos governing instrument, as defined in s. 700.27 (1) (b).
13
14

15 Insert 19-13

16 **SECTION 5.** 766.31 (6) of the statutes is renumbered 766.31 (6) (a) and amended
17 to read:

18 766.31 (6) (a) Date of marriage same as determination date. Property owned
19 at a the determination date, where the date of marriage which occurs after 12:01
20 a.m. on January 1, 1986, is the same as the determination date, is individual
21 property of the owning spouse if, at the marriage, both spouses are domiciled in this
22 state.

History: 1983 a. 186; 1985 a. 37; 1987 a. 393; 1991 a. 301; 1993 a. 160.

23 **SECTION 6.** 766.31 (6) (b) of the statutes is created to read:

all of

766.31 (6) (b) *Date of marriage prior to determination date.* If the date of marriage precedes the determination date, the property owned at the determination date is not classified by this chapter but is subject to the following:

1. Subsections (8) and (9) govern property owned at the time of marriage.
2. Subsections (8) and (9) govern property acquired while the spouses were married but before the determination date if the property would have been individual property had it been acquired after the determination date.
3. Subsections (8) and (9) and s. 861.02 govern property acquired while the spouses were married but before the determination date if the property would have been marital property had it been acquired after the determination date.

Ins 30-21

SECTION 7. 854.08 (5) (title) of the statutes is repealed and recreated to read:
854.08 (5) (title) PROPERTY UNDER GUARDIANSHIP, CONSERVATORSHIP, OR POWER OF ATTORNEY.

Ins. 34-8

SECTION 8. 854.13 (title) of the statutes is amended to read:

854.13 (title) Disclaimer of transfers at death.

History: 1977 c. 309; 1983 a. 189 s. 329 (26); 1991 a. 39, 301; 1995 a. 360; 1997 a. 188 ss. 22 to 59, 175; Stats. 1997 s. 854.13.

SECTION 9. 854.13 (2) (a) of the statutes is renumbered 854.13 (2) (a) 2.

SECTION 10. 854.13 (2) (a) 1. of the statutes is created to read:

1 854.13 (2) (a) 1. In this paragraph, "person" includes a person who is unborn
2 or unascertained.

3
4
5 Insert 36-1

6 **SECTION 11.** 854.13 (10) of the statutes is renumbered 854.13 (10) (a) and
7 amended to read:

8 854.13 (10) (a) Future interest held by a person other than the disclaimant.

9 Unless the governing instrument creating the future interest manifests a contrary
10 intent provides otherwise, either expressly or as construed from extrinsic evidence,
11 upon the disclaimer of a preceding interest, a future interest limited to take effect
12 in possession or enjoyment after the termination of the interest which is disclaimed
13 held by a person other than the disclaimant takes effect as if the disclaimant had died
14 immediately before the effective date of the governing instrument time of
15 distribution or, if the disclaimant is an appointee under a power exercised by a
16 governing instrument power of appointment, as if the disclaimant had died before
17 the effective date of the exercise of the power.

History: 1977 c. 309; 1983 a. 189 s. 329 (26); 1991 a. 39, 301; 1995 a. 360; 1997 a. 188 ss. 22 to 59, 175; Stats. 1997 s. 854.13.

18 **SECTION 12.** 854.13 (10) (b) of the statutes is created to read:

19 854.13 (10) (b) Future interest held by the disclaimant. A future interest held
20 by the disclaimant takes effect as described in par. (a) unless the court determines
21 that acceleration would contradict the donor's probable intent.

****NOTE: Is the court the only person that can determine that acceleration would
contradict the donor's probable intent. I ask only because you were careful to use passive
voice elsewhere because the court was not the only person able to make determinations.

22 **SECTION 13.** 854.13 (12) (b) of the statutes is amended to read:

1 854.13 (12) (b) Any disclaimer that meets the requirements of section 2518 of
2 the Internal Revenue Code, or the requirements of any other federal law relating to
3 disclaimers, constitutes an effective disclaimer under this section or s. 700.27.

4 History: 1977 c. 309; 1983 a. 189 s. 329 (26); 1991 a. 39, 301; 1995 a. 360; 1997 a. 188 ss. 22 to 59, 175; Stats. 1997 s. 854.13.

5
6 Insert 41-7

7 SECTION 14. 854.20 (2) (bm) of the statutes is created to read:

8 854.20 (2) (bm) Subject to sub. (5), in par. (am) 2., the child is not treated as the
9 child of the deceased birth parent for purposes of transfers at death from or through
10 the child or for purposes of any statute or other rule conferring rights upon relative
11 of that parent under the law of intestate succession or governing instruments.

12
13
14 Insert 42Note

15 NO 4 You asked for authority on this issue. I think you believe that "this section"
16 could be misinterpreted as "this subsection." But our drafting manual requires that
17 we cite the unit specifically (sec. 9.02). Also, "this section" appears in the statutes
18 13,938 times ("its subparts" accompanies none of those appearances). Finally, I am
19 not sure what else "this section" could mean if not the whole section. If I am missing
20 the misinterpretation that you perceive, please let me know.

21
22
23 Ins 57-23

24 SECTION 15. 880.61 (11m) of the statutes is created to read:

1 880.61 (11m) ✓ "Qualified minor's trust" means any trust, including a trust
2 created by the custodian, for which ✓ all of the following apply:

3 (a) The minor is the sole beneficiary.

4 (b) The trust satisfies the requirements of section 2503 (c) of the Internal
5 Revenue Code ✓ and the regulations implementing that section. ✓

6 **SECTION 16.** 880.675 (1m) ✓ of the statutes is created to read:

7 880.675 (1m) At any time a custodian may transfer part ^{or} of all of the custodial
8 property to a ✓ qualified minor's trust without a court order. Such a transfer
9 terminates the custodianship to the extent of the transfer.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0135/P1dn
CMH:jld:pg

September 16, 2004

A statute may be classified as substantive, procedural, or remedial and such classification determines whether a statute is presumed to operate prospectively or retroactively. If the changes are remedial or procedural, the statute is presumed to apply retroactively if it does not impair contracts or other vested rights and if there is no clearly expressed contrary legislative intent. *Boggs v. Morden*, 117 Wis. 2d 773, 775, 345 N.W.2d 490, 491 (1984) and *Gutter v. Seamandel*, 103 Wis. 2d 1, 17, 308 N.W.2d 403, 411 (1981). You state that the changes to all of the provisions that are not found in the initial applicability provision are remedial and procedural; therefore, the additional language that would "affirmatively state that.... the changes are assumed to apply to any matter that has not been resolved as of the effective date...." is unnecessary.

To indicate clearly that the changes are procedural or remedial, you asked for an explanatory note; however, Joint Rule 59 permits explanative notes only in "revision and correction bills prepared by the revisor of statutes, in reconciliation bills introduced by the committee on organization of either house, and in proposals introduced or offered and in substitute amendments or amendments offered by the joint legislative council or its law revision committee, at the request of the judicial council, and by or at the request of any other official interim study or investigative group." Since this proposal does not fit into one of those categories, the rules do not permit an explanatory note.

Alternatively, you asked for a statement of legislative intent. Courts may accept an analysis as a statement of legislative intent. *Stockbridge School Dist. v. DPI*, 202 Wis. 2d 214, 224-25 (1996), *Milwaukee v. Kilgore*, 193 Wis. 2d 168, 184-85 (1995), *Sheely v. DHSS*, 150 Wis. 2d 320, 336, 442 N.W.2d 1 (1989), *West Allis School Dist. v. DILHR*, 116 Wis. 2d 410, 422 (1984), and *In Re Estate of Haese*, 80 Wis. 2d 285, 296-97 (1977). If you like, I will add language to the analysis to indicate legislative intent.

Courts also may look to the relating clause to determine legislative intent. *Steinbarth v. Johannes*, 138 Wis. 2d 182, 189 (Ct. App. 1987), *State ex rel. Kleczka v. Conta*, 82 Wis. 2d 679, 689-90 (1978), *State v. Consolidated Freightways Corp.*, 72 Wis. 2d 727, 737 (1976), *Harris v. Kelley*, 70 Wis. 2d 242, 247 (1975), *Middleton Jt. School Dist.*, 60 Wis. 2d 294, 305 (1973), *Dept. of Natural Resources v. Clintonville*, 53 Wis. 2d 1, 9 (1971), *Townsend v. Wisconsin Desert Horse Asso.*, 42 Wis. 2d 414, 422 (1969), *Tanck v. Clerk*, and *Kalkopf v. Donald Sales & Mfg. Co.*, 33 Wis. 2d 247, 257 (1967). If you like, I will add language to the relating clause indicating legislative intent.

Also, comments from nonlegislative committees can aid in interpreting legislative intent. *In re Estate of Haese* and *Czaicki v. Czaicki*, 73 Wis. 2d 9, 16, 242 N.W.2d 214 (1976). If you wish to add comments to the drafting file, please send them to me.

This draft is still a preliminary draft; it will have to be redrafted to be introducible. Please see the embedded notes in the draft.

Cathlene Hanaman
Legislative Attorney
Phone: (608) 267-9810
E-mail: cathlene.hanaman@legis.state.wi.us